

NOTICE OF INTENT

Department of Revenue Policy Services Division

Corporation Income TaxX Determination of Louisiana Apportionment Percent (LAC 61:I.1134)

Under the authority of R.S. 47:287.95, R.S. 47:287.785, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1134 relative to attribution of revenue from telephone, telecommunications, and other similar services and the attribution of revenue from sales of natural resources to pipeline companies that are made in the regular course of business.

Louisiana Revised Statute 47:287.95 determines the Louisiana apportionable percent of any taxpayer whose net apportionable income is derived by several different business enterprises. By amending LAC 61:I.1134, the Department of Revenue will provide specific guidance to telephone, telecommunications, and other similar services, concerning revenue to be included in the numerator of the revenue ratio. The deregulation of the natural gas industry makes the Subparagraph relating to attribution of sales of natural resources to pipelines obsolete and no longer necessary. Examples regarding the attribution of revenue from sales transported by public carrier pipelines are confusing and are being removed.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 11. Income: Corporation Income Tax

§1134. Determination of Louisiana Apportionment Percent

A. - D.1.e. ...

2. Revenue From Telephone, Telecommunications, and Other Similar Services. Gross apportionable income attributable to Louisiana from providing telephone, telecommunications, and similar services shall include, but is not limited to:

a. revenue derived from charges for providing telephone "access" from a location in this state. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to a service address located in the state and without regard to actual usage;

b. revenue derived from charges for unlimited calling privileges, if the charges are billed by reference to a service address located in this state;

c. revenue from intrastate telephone calls or other telecommunications, except for mobile telecommunication services, beginning and ending in Louisiana;

d. revenue from interstate or international telephone calls or other telecommunications, except for mobile telecommunication services, either beginning or ending in Louisiana if the service address charged for the call or telecommunication is located in Louisiana, regardless of where the charges are billed or paid;

e. revenue from mobile telecommunications service;

i. revenue from mobile telecommunications services shall be attributed to the place of primary use, which is the residential or primary business street address of the customer;

ii. if a customer receives multiple services, such as multiple telephone numbers, the place of primary use of each separate service shall determine where the revenue from that service is attributed;

iii. revenue from mobile telecommunications services shall be attributed to Louisiana if the place of primary use of the service is Louisiana;

f. definitions. For the purposes of this Subparagraph, the following terms have the following meanings unless the context clearly indicates otherwise:

i. *CallX*a specific telecommunications transmission;

ii. *CustomerX*any person or entity that contracts with a home service provider or the end user of the mobile telecommunications service if the end user is not the person or entity that contracts with the home service provider for mobile telecommunications service;

iii. *Home Service ProviderX*the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services;

iv. *Place of Primary Use of Mobile Telecommunications ServiceX*the street address representative of where the customer's use of mobile telecommunications service primarily occurs. This address must be within the licensed service area of the home service provider and must be either the residential or the primary business street address of the customer. The home service provider shall be responsible for obtaining and maintaining the customer's place of primary use as prescribed by R.S. 47:301(14)(i)(ii)(bb)(XI);

v. *Service AddressX*the address where the telephone equipment is located and to which the telephone number is assigned;

vi. *TelecommunicationsX*the electronic transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through the use of any medium such as wires, cables, satellite, microwave, electromagnetic waves, light waves or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission;

vii. *Telecommunications ServiceX*providing telecommunications, including service provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

3. Sales Made in the Regular Course of Business

a. The sales attributable to Louisiana under R.S. 47:287.95 are those sales made in the regular course of business where the goods, merchandise or property are received in Louisiana by the purchaser. Similarly, where the goods, merchandise or property are received in some other state, the sale is attributable to that state. Sales made in the regular course of business include all sales of goods,

merchandise or product of the business or businesses of the taxpayer. They do not include the sale of property acquired for use in the production of income. Where a taxpayer under a contract performs essentially a management or supervision function and receives a reimbursement of his costs plus a stipulated amount, the amounts received as reimbursed costs are not sales although the contract so designates them. The stipulated amount constitutes other gross apportionable income and shall be attributed to the state where the contract was performed. Where goods are delivered into Louisiana by a public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer, and not the transportation relating to a sale or subsequent use by the purchaser.

b. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. Actual delivery rather than technical or constructive delivery controls.

c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by taxpayer, consideration must be given to the following principles.

i. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent circumstances.

ii. The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

iii. In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by the carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B., Houston, to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

d. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. Actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers

in different states, peculiar problems of attribution arise. In solving such problems consideration must be given to the following principles.

i. Where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality rather than any specific oil.

ii. In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied with logic and common sense.

e. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage relates to the sale by the taxpayer. Generally, the rules and principles set forth above will control where the storage is of temporary nature, such as that necessitated by lack of transportation, by change from one means of transportation to another, or by natural conditions. In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:482 (March 2004), amended LR 31:

Family Impact Statement

The proposed amendment of LAC 61:I.1134 regarding the attribution of revenue from telephone, telecommunications, and other similar services should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs, P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be submitted no later than 4:30 p.m., January 27, 2005. A public hearing will be held on January 28, 2005, at 9 a.m. in the River Room located on the seventh floor of the LaSalle

Building, 617 North Third Street, Baton Rouge, Louisiana
70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Corporation Income
TaxX Determination of
Louisiana Apportionment Percent**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The implementation of this proposed regulation, which updates the corporation income tax regulation relating to the determination of the Louisiana apportionment percentage, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There should be a minimal increase in revenue collections for the state as a result of this proposed regulation.

There should be no effect on revenue collections of local governmental units as result of this proposed regulation.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There should be no costs or economic benefits that directly affect persons or non-governmental groups as a result of this proposed regulation.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges
Secretary
0412#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office